THE HONOURABLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION NOs.11535 OF 2005,11536,11537 & 11556 of 2005

Between

K.Veera Prasad son of K.Veerabhadra and three others

…Petitioners

vs.

The Andhra pradesh State Trading Corporation, represented by its Managing Director and two others.

…Respondents

THE HONOURABLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION NO.11535 OF 2005 & batch

ORAL COMMON ORDER

The four petitioners (in these writ petitions) are employees of the A.P. State Trading Corporation (1st respondent). The petitioners are working as Deputy Manager (W.P.No.11535 and 11536 of 2005), General Manager (W.P.No.11537 of 2005) and Manager (W.P.No.11556 of 2005). By individual proceedings of the then Managing Director (impleaded by name as the 3rd respondent in each of the writ petitions) the petitioners were placed under suspension pending enquiry on allegations of having committed irregularities/misconduct while in service. On behalf of the 1st respondent-Corporation, it was stated at the hearing of the writ petitions that charge memos have been issued to the petitioners calling for their explanation, on 31-10-2005 and that a departmental enquiry would be expeditiously persued and concluded in respect of the petitioners.

Heard Sri N.Ramamohan Rao, learned counsel for all the petitioners, Sri D.Prakash Reddy, learned counsel instructed by Sri B.D.Maheswara Reddy, learned counsel for the 1st respondent and Sri S.Lakshminarayana Reddy, learned counsel for the 3rd respondent.

The petitioners were placed under suspension pending enquiry by the impugned proceedings (dated 13-05-2005 by the Managing Director of the 1st respondent-Corporation in exercise of the powers under Regulation-33(1)(A) of the A.P.S.T.C.Conduct Discipline and Appeal Regulations. The order of suspension in

respect of each petitioners is issued on the ground that (a) serious irregularities committed by the General Manager and other staff of the hire purchase division has come to light in a special audit of all transactions by the hire purchase division during 1986-2004. The special audit report submitted on 11-03-2005 revealed the failure of the petitioners' in implementing the hire purchase scheme as per the terms of the agreement with the borrower and in accordance with the rules of the A.P.S.T.C.;(b) petitioners allowed all overdue amounts to accumulate beyond all permissible limits, huge amounts became overdue as on 31-12-2004; (c) the Officer had failed in his essential duty in monitor repayments of the instalments and failed to pursue recovery of the overdue amounts and (d) the officer failed to compile and update the basic information of defaulters and failed to acquire information regarding death, retirement, removal or transfer of any of the borrowers who are Government employees. These facts having been revealed in the special audit report, it was perceived that the 1st respondent-Corporation has been subjected to huge losses by the dereliction of duties by the petitioners who are in position of managerial responsibilities. The suspension order also recorded that several cases of fraud were brought to light where articles were never purchased by the borrowers and amounts much less than the sanctioned amounts were disbursed to them. According to the order of suspension the circumstances raise questions as to the officers' nexus with M/S.Vijayavani Traders, an exclusive dealer under S.I.H.P scheme as well as the general hire purchase scheme.

Sri N.Ramamohan Rao, learned counsel for the petitioners assails the order of suspension on the ground that it is activated by irrelevant and *mala fide* considerations-*mala fides* of the 3rd respondent who was the then Managing Director who passed the impugned orders. The petitioners have set out elaborate pleadings as to the terms of the special institutional hire purchase (SIHP) and the general hire purchase (GHP) schemes, the practice of the 1st respondent-Corporation with regard to recoveries of the amounts advanced under the schemes and have pleaded that there is neither negligence nor misconduct involved in the petitioners' functioning as employees of the 1st respondent-Corporation, in the hire purchase division.

The validity of orders of suspension pending enquiry are the subject matter of these writ petitions. In the context of the *lis* it is not the province of this Court to

adjudicate upon whether the petitioners have been guilty of a conduct warranting a conclusion of misconduct or whether even if there are any irregularities, procedural or otherwise, in the functioning of the hire purchase division, the petitioners were in any way concerned with the occurrence of such irregularities. Even the question whether the decisions or acts of omission or commission of or by the petitioners, are mere errors of judgments or graver species of misconduct, ought not to be gone into at this stage.

That the impugned orders of suspension are issued by the Managing Director who is a competent authority is not in dispute. The only question therefore is whether the orders are invalid on account of the *mala fides* of the 3rd respondent.

W.P.No.11537 of 2005 filed by a General Manager of the 1st respondent-Corporation is exemplar of the grievance in all these writ petitions and its pleadings are considered as illustrative of the issues in these writ petitions. In para.10 the petitioner pleads that the 3rd respondent, the then Managing Director had an overbearing attitude, was in the habit of using foul and abusive language towards employees and was insufferable. It is also pleaded that the 3rd respondent was a junior level All India Service Officer of a rank not normally posted as a Managing Director of the 1st respondent-Corporation. It is alleged that the State Government decided to shift the 3rd respondent to a less significant post in the Agriculture Department, on 13-05-2005 and the 3rd respondent suspected the involvement of the officers of the 1st respondent-Corporation for this predicament of his. It is also alleged that the State Government had learnt of a trip by the 3rd respondent to China, Singapore and Malaysia, ostensibly for recovering about Rs.11 crores locked in an iron ore export deal of the 1st respondent-Corporation with a dealer in China and that the State Government was dissatisfied that despite the large sum of money spent on the 3rd respondent's trip, no amount was recovered. Derogatory and vague allegations on the 3rd respondent's reputation are asserted including that in the over eight months of his tenure as a Managing Director, the 3rd respondent's contribution to the growth of business, was dismal and insignificant. The petitioner claims that the 3rd respondent suspected that the officers of the 1st respondent had leaked information about his unsatisfactory conduct to the State Government and has vengefully abused his disciplinary powers and issued the impugned order.

The petitioner further asserts that the regular and periodic audit reports by qualified Chartered Accountants have not raised any objections or pointed out any irregularities in the functioning of the hire purchase division nor have any such irregularities been pointed out by the audit party of the office of the Accountant General of Andhra Pradesh. Despite there being a regular method of internal and statutory audit, it is asserted, the 3rd respondent entrusted the work of the special audit " to favour a close friend of his" and for a huge amount as a fee. It is asserted that the 3rd respondent without following a transparent procedure, without seeking approval from the Board of Directors or permission of the Chairman of the 1st respondent-Corporation, appointed M/S.Sagar Associates, Chartered Accountants as special auditors. The petitioner alleges that Sri Vidyasagar the main partner of M/S.Sagar Associates is learnt to be a close friend of 3rd respondent and that a partner of the firm Sri Srinivasa Rao was entrusted with the audit work. Srinivasa Rao completed the auditing of the hire purchase scheme commencing the work from 16-01-2005, by 11-03-2005. The petitioner alleges that the special audit was perfunctory and faulty. The petitioner also implies, that to oblige the 3rd respondent, the auditors had drawn up a partisan and faulty report. The petitioner also alleges that M/S.Sagar Associates are the personal auditors of the 3rd respondent and take care of his tax returns and portfolio management.

The petitioner also points out that the special audit report and it conclusions are based on assumptions as to recovery procedures which are at variance which the assumptions adopted by the regular internal auditors and the statutory auditors. The petitioner also pleads that the special audit report was considered by the then General manager who recorded his notes for consideration of the Managing Director and that the then Managing Director had passed orders that weekly target reports be put up. It is also stated that the file was received by the petitioner (on 12-04-2005) and he had submitted a note as to why the special audit report need not be considered. It is also stated that no action was taken since 28-03-2005 and suddenly the impugned orders of suspension were passed. It is alleged that the suspension order is activated by extraneous factors and considerations and prompted by malice and prejudice entertained by the 3rd respondent towards the petitioners. It is also asserted that the 3rd respondent failed to apply his mind to the relevant facts and the decision making process involved in the order of suspension is vitiated. The

petitioners also plead the various and active steps taken by them for recovery of the arrears of the loan instalments and generally seek to establish that the allegations of misconduct (alleged against them) are without basis.

A counter-affidavit is filed on behalf of the 1st respondent by the present Vice-Chairman and Managing Director. It is asserted that the suspension proceedings were issued by the 1st respondent as a strong *prima facie* case was found with regard to commission of serious irregularities by the petitioners. After considering the material on record in the special auditors' report, the 1st respondent asserts it has come to light that norms and guidelines issued by the Corporation with regard to the General Hire Purchase (GHP) scheme were not followed while sanctioning the loans, preparing the list of defaulters, effecting recoveries from defaulters and in pursuing the drawing officers for salary recoveries. It is also stated that strong *prima facie* case exists to infer gross irregularities and imprudent functioning by the petitioners that has subverted the interests of the Corporation. The 1st respondent has set out inasmuch detail as the petitioners have, facts to contend that the petitioners had acted irresponsibly, with gross negligence, violated mandatory procedures, perpetrated fraud on the Corporation and have suppressed vital and relevant facts, resulting in huge losses to the Corporation. The 1st respondent's counter-affidavit also proceeds to categorically deny the allegations against the 3rd respondent. It is denied that orders were passed by the Government on 13-05-2005 shifting the 3rd respondent out of the 1st respondent Corporation and it is stated that the 3rd respondent along with the three other officers had left for training to Mussori on 14-05-2005 and the transfer orders were issued by the Government on 15-05-2005 while the 3rd respondent was on training. It is categorically asserted that the 3rd respondent, while working as the Managing Director of the 1st respondent-Corporation had taken appropriate and adequate steps to safeguard the Corporation interests and had initiated serious action against erring employees.

Responding to the petitioners' allegations that the special audit was unnecessary in view of the internal and statutory audits, the 1st respondent has pleaded that the internal auditors were misguided as the defaulters lists were not provided to them and that this fact has also been recorded by the internal auditors. As the internal

auditors rely upon the information submitted by the petitioners (as officers of the Corporation), the mere fact that there was an internal audit does not prohibit the conduct of a special audit when required in administrative exigency and to ferret out the true position. It is pleaded that statutory audit is a mere accounts audit and mainly focusses on account transactions and that accounts are yet to be audited for the year 2004-2005. It is also stated that the Accountant General's auditors had raised a query about the defaulters position and are yet to take up annual accounts for the year 2004-2005. The petitioners' allegation as to the perfunctory and faulty nature of the special audit is categorically denied by the 1st respondent and specifics are pleaded to support the plea that the special audit was adequate. The allegation that excess fee was paid to the special auditors is denied and it is contended that it is not the petitioners' business to assess what fee should be paid to auditors. It is contended that the fee paid had been approved by the Finance Department of the Corporation and the Managing Director and that the Chairman of the Corporation had been appraised about the position from time to time by the Managing Director. It is also pleaded in considerable detail about the several facts that had come to light to support the allegation of misconduct against the petitioners which has been the basis for the impugned orders of suspension. The allegations made against the special auditors are characterized as reckless. It is also alleged that since serious irregularities were committed by the petitioners and other officers the matter is also taken up by the Vigilance and Enforcement Department of the Government and departmental action is also in the pipeline. The counter-affidavit also sets out pleadings with regard to procedures to be followed for the several hire purchase schemes and recoveries of the amounts advanced. The allegation that the 3rd respondent did not take any action on the special audit repot (dated 11-03-2005) till 28-03-2005 is denied. It is stated that the 3rd respondent had issued an office order on 14-03-2005 that the special audit had revealed huge amount of frauds and had ordered that no fresh loans be granted under any hire purchase scheme and the division and branches were advised to concentrate on realization of dues for the next three months. By another office order dated 14-03-2005, a committee comprising three officers was constituted to review the situation and submit recommendations for recovery of the dues. It is also pleaded that 23 special recovery teams were constituted on 19-03-2005 and guidelines issued for recovery of the over dues. It is asserted that the order of suspension was passed after proper application of mind to the findings of the special auditors' report and that the

petitioners are placed under suspension in public interest and to safeguard the interests of the Corporation.

The 3rd respondent has filed a counter-affidavit clearly and categorically denying the allegations against him including those relating to his offensive behaviour, employment of foul language, abuses and threats to employees, misbehavior with employees and the allegation that the orders of suspension were issued *mala fide*. The allegation that the answering respondent had undertaken an oversees trip without a resultant benefit to the Corporation is also denied. With regard to the allegation that the order of suspension was issued by the answering respondent as a Managing Director of the 1st respondent-Corporation after learning about his transfer out of the Corporation, it is stated that a number of officers of All India Service were transferred on the same day and he was not aware of his transfer as on the date he passed the orders of suspension. It is stated that after he left for training to Mussori on 14-05-2005 the Government issued transfer orders on 15-05-2005 and that there was no extraneous motive for issuing the orders of suspension. This respondent specifically pleads that M/S.Sagar Associates, Chartered Accountants, Hyderabad is a reputed firm of Chartered Accountants and he had therefore entrusted the special audit to them. The 3rd respondent also pleads that as the said special auditors did a competent and thorough job in bringing to light the several irregularities committed in implementing the hire purchase schemes, he felt that a remuneration of Rs.1 lakh was reasonable and accordingly sanctioned payment of the said amount to the auditors. It is also stated that the fee to the auditors was paid with the knowledge of the Board of Directors and strictly as per the scrutiny and advise of the finance department of the Corporation. The allegation of arbitrary, exercise of power is also categorically denied. The other personal allegations made against him are denied and this respondent categorizes the personal allegations made as highly defamatory, baseless and reckless.

Except pleading that the petitioners' believe that the 3rd respondent entertained a suspicion that the petitioners and other employees of the Corporation carried tales against the 3rd respondent to the Government which eventually resulted in the 3rd respondent's transfer out of the Corporation and that on the basis of such suspicion

the 3rd respondent *mala fide* placed them under suspension, no material or even pleading exists to substantiate the petitioners' belief that the 3rd respondent entertained a suspicion as alleged. The pleadings as to the animus of the 3rd respondent against the petitioners are wholly vague, bereft on material particulars and specifics and are reckless. No inference of *mala fides* can legitimately be drawn on the basis of such vague allegations, which have been specifically denied.

Nothing is established by the petitioners to conclude that the appointment of auditors to conduct a special audit is illegal. The mere fact that internal and statutory audit procedures exist for the audit of the 1st respondent Corporation's affairs, does not preclude the appointment of special auditors if the Corporation so desires in the plenitude of its administrative discretion. If the 3rd respondent as the then Managing Director sanctioned excess remuneration to the auditors, excess then what was legitimately due to them, it is for the State Government to take such action as is considered appropriate. It is not for the petitioners who are lower cadre employees of the Corporation to decide that no special audit is warranted or that the remuneration is in excess of what ought to have been paid to the auditors. The allegations in this regard are recklessly made.

The petitioners have endeavoured to plead and contend that their conduct as officers of the hire purchase division of the 1st respondent-Corporation was valid and in accordance with the established practices, norms and procedures that govern the hire purchase schemes and that there was no misconduct warranting initiation of disciplinary proceedings or justification for placing them under suspension. Adjudication of these aspects is not the province of this court and at this stage of the matter. If the management was satisfied either on the basis of the special audit report or otherwise that there were certain irregularities in the hire purchase division and a *prima facie* case exists to infer misconduct on the part of the petitioners, the 1st respondent through the 3rd respondent, the then Managing Director, who was admittedly the competent authority, was well within its rights to pass orders placing the petitioners under suspension. While considering the validity of orders of suspension pending enquiry this Court normally does not go deep into the question whether there is material to substantiate the *prima facie* inference of irregularities or misconduct and whether the order of suspension pending enquiry is an administrative action commensurate with the material available. The circumstances

surrounding the suspension of the petitioners does not justify a departure from this normal rule of prudence by the judicial branch.

The petitioners' allegation that the 3rd respondent knew that he was likely to be transferred out of the 1st respondent-Corporation by 13-05-2005 itself and has therefore passed the impugned orders of suspension is categorically denied by the 3rd respondent as well as the 1st respondent. Even if the 3rd respondent knew about his impending transfer, that by itself did not disable the 3rd respondent from exercising his powers and authority as the Managing Director, to place the petitioners under suspension pending enquiry if he was satisfied that such expeditious action would serve the interests of the Corporation and the cause of disciplining the establishment of the 1st respondent-Corporation. The petitioners have wholly failed to establish the allegations of *mala fides* made against the 3rd respondent.

As the allegations of *mala fides* have not been established and as the competence of the 3rd respondent to have issued the impugned orders is not disputed, no case is made out for interference. Much has been argued by the petitioners on a noting of the 3rd respondent dated 11-03-2005, made on the letter by the special auditors to the Managing Director dated 11-03-2005. The noting appears to be in response to the list of defaulters of the hire purchase schemes including those with respect to the agreements in force as on 31-12-2004 and the defaulters position for the hire purchase schemes which had lapsed and in respect of which recoveries are still due. The noting by the Managing Director is to the effect that a committee of General Managers shall examine all aspects and put up clear plan of action for recovery and an intensive drive should be taken up to recover all over due amounts. A committee of General Managers was also constituted for the said purpose, in the note. It is contended by the petitioners that having decided to merely constitute a committee to go into various aspects and take action for recovery, the 3rd respondent acted arbitrarily and without any subsequent developments, by placing the petitioners under suspension. In the considered view of this Court this contention is misconceived. Evolving a rational plan of action for recovery of dues and constituting a committee for the said purpose does not in any way establish that the Managing Director had decided that no action against erring employees was justified nor does it support an inference that the Managing Director was satisfied

that the conduct of the employees of the hire purchase division was merely less than exemplary and did not amount to serious misconduct. If after a further examination of the special auditors report, the Managing Director was subsequently satisfied that initiation of disciplinary proceedings and placing the identified officers under suspension was in the interests of efficient management, he was at liberty to take such an appropriate decision. The noting dated 11-03-2005 does not militate against this position.

It is required to place on record that the allegations of the petitioners made against the 3rd respondent are highly intemperate and unbecoming of officers. The allegations of *mala fides* against the 3rd respondent have been casually made and no seriousness is discernable in the recording of such allegations. The presumptionous of the petitioners is disturbing. They have alleged that of the officers so far posted as Managing Director of the 1st respondent-Corporation, the 3rd respondent is the only junior level officer of the IAS cadre. The petitioners appear to have arrogated to themselves the authority to determine what level of seniority (of officers of All India cadre) should be posted as Managing Director of the 1st respondent-Corporation/ a Corporation in which they are lower level employees. This Court records that the allegations of *mala fides are* reckless.

For the aforesaid reasons the writ petitions are misconceived and are accordingly dismissed. As the petitioners have chosen to make reckless/unverified allegations of *mala fides*, the writ petitions are dismissed with costs of Rs.2,500/-(Rupees two thousand and five hundred only) in each of the writ petitions, of which the petitioners in each of the writ petitions shall be liable to pay Rs.500/-(Rupees five hundred only) per writ petition to the 3rd respondent and Rs.2,000/- in each of the writ petitions, to the A.P. State Legal Services Authority, Hyderabad.

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GODA RAGHURAM,J

___NOVEMBER,2005

***TSNR**